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June 25, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA MESSENGER

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12 Street, SW, Room 5C122
Washington, DC 20554

Re: Joint Petition of BellSouth, SBC, and the Verizon Companies
or Elimination of Mandatory Unbundling of High-Capacity Loops
and Dedicated Transport ("Joint Petition"), CC Docket No. 96-98 /

Dear Ms. Salas:

By undersigned counsel, VoiceStream Wireless Corporation and Nextel Communications, Inc. hereby submit joint reply comments in response to the above-captioned petition. Please find enclosed the original filing and the required seven (7) copies.

Please do not hesitate to contact us if you have any questions on this matter.

Respectfully submitted,



Douglas G. Bonner
Elizabeth Dickerson

Enclosure

cc: Robert A. Calaff
Robert D. Edgerly
Carl Hansen
Brian O'Connor

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of:)	
)	
Implementation of the Local)	
Competition Provisions of the)	CC Docket No. 96-98
Telecommunications Act of 1996)	
)	
Joint Petition of BellSouth, SBC,)	
And Verizon for Elimination of)	
Mandatory Unbundling of)	DA 01-911
High-Capacity Loops)	
And Dedicated Transport)	

**JOINT REPLY COMMENTS OF
VOICESTREAM WIRELESS CORPORATION AND
NEXTEL COMMUNICATIONS, INC.**

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June 25, 2001

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**SUMMARY OF JOINT REPLY COMMENTS OF
VOICESTREAM WIRELESS CORPORATION AND
NEXTEL COMMUNICATIONS, INC.**

Almost without exception, parties commenting in this proceeding object to the relief the RBOCs seek. The USTA, however, takes the Joint Petition one step further and proposes an alleged “CLEC Safety Mechanism” that has the effect of shifting the burden of proof (that requesting telecommunications carriers would be impaired by the lack of access to certain high capacity UNEs) to the requesting carriers themselves. The proposal also would eliminate the national nature of the list.

The CRMS Carriers urge the Commission to deny the relief the RBOCs seek and enforce its rules – with respect to *all* UNEs and *all* requesting carriers – to discourage similarly premature and flawed future petitions. The industry has unnecessarily expended scarce resources responding to this premature and repetitive petition.

The Commission must aggressively enforce its current rules and require ILECs immediately to fulfill their UNE obligations, especially with respect to the long-ignored CMRS carriers. The Commission must require that ILECs convert the special access arrangements of *all* requesting CMRS carriers to UNEs or UNE combinations. The Commission also should require the ILECs that have delayed such conversions to credit the CMRS carriers for the difference between the special access tariff rate and the UNE rate, retroactively to the date the carriers made their first conversion requests.

The Commission must postpone consideration of the elimination of any UNEs until its pre-established three-year review. At that time, however, it must make certain that CMRS carriers are explicitly included in any analysis of the CMRS industry. ILECs

must specifically substantiate that CMRS carriers have adequate alternative access to high capacity facilities in any serving wire center in any metropolitan or rural serving area throughout the ILEC's footprint.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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JOINT REPLY COMMENTS OF
VOICESTREAM WIRELESS CORPORATION AND
NEXTEL COMMUNICATIONS, INC.

VoiceStream Wireless Corporation ("VoiceStream") and Nextel Communications, Inc. ("Nextel") (collectively, "CMRS Carriers"), by undersigned counsel, submit these joint reply comments in response to the June 11, 2001 comments filed on the Joint Petition of BellSouth Corporation, SBC Communications, Inc., and Verizon Telephone Companies (collectively "RBOCs") in this docket. The RBOCs have essentially asked the Federal Communications Commission ("Commission") to reverse a substantial portion of its *UNE Remand Order* of November 5, 1999,¹ by eliminating high-capacity loops and dedicated transport from the national list of unbundled network elements ("UNEs") that the incumbent local exchange carriers ("ILECs") must make available to requesting telecommunications carriers.

¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Third Report and Order*, 15 FCC Rcd 3696 (1999) ("*UNE Remand Order*").

Almost without exception, parties submitting comments in the instant proceeding echo many of the arguments that the CMRS Carriers posited in their initial comments: The Telecommunications Act of 1996 (“1996 Act”) requires ILECs to provide UNEs to *all* telecommunications carriers – including CMRS carriers – rather than make available these necessary facilities only at inflated tariffed special access rates.² The data upon which the RBOCs base their petition for elimination of high-capacity UNEs is flawed and misleading and offers no compelling evidence that these network functionalities no longer meet the Commission’s carefully articulated impair standard.³ Further, because any changes in market conditions since the Commission adopted its mandatory list do not warrant elimination of any elements from the list at this time, the Commission should maintain the three-year quiet period it adopted in the *UNE Remand Order*.⁴ Finally, the RBOCs’ argument that the continued availability of high-capacity UNEs would discourage investment in third-party facilities is baseless.⁵

The United States Telecom Association (“USTA”), of which the RBOCs are leading members, stands alone among commenting parties in supporting the Joint

² Nextel Comments at 2 and VoiceStream Comments at 2-3. *See also* AT&T Corporation (“AT&T”) Comments at 11.

³ *See* Coalition of Competitive Fiber Providers (“Fiber Coalition”) Comments at 8 (data overestimates number of buildings CLECs serve), AT&T Comments at 11 (models do not reflect real world costs and carrier delays), and Association of Communications Enterprises, LLC Comments at 8 (RBOC exaggerate fiber deployment by counting long-haul fiber).

⁴ *See* Association for Local Telecommunications Services Comments at 3 (three years needed for carriers to implement business plans), Allegiance Telecom, Inc. and Focal Communications Corporation (“Allegiance and Focal”) Joint Comments at 12 (three-year interval provides stability and administrative certainty), and Fiber Coalition Comments at 4 (three-year period allows Commission to gather two years’ evidence).

⁵ Allegiance and Focal Joint Comments at 27; Broadslate Networks, Inc., Network Plus, Inc., RCN Telecom Services, Inc. and Telergy (“Broadslate”) Comments at 30; CLEC Council of the United States Telecom Association (“CLEC Council”) Comments at 4; and WorldCom, Inc. (“WorldCom”) Comments at 22.

Petition.⁶ It even expands upon the RBOCs' efforts by proposing its own "CLEC Safety Mechanism." This proposal, however, is more appropriately termed a "CLEC Burden-Shifting Mechanism," as it essentially reverses the impair standard the Commission articulated in the *UNE Remand Order* and eliminates the presumptive benefits of the Commission's national UNE list construct. Like the Joint Petition, this proposal seeks to undo completely the UNE access provisions by circumventing the procedures carefully established in the *UNE Remand Order*. The Commission should summarily reject the Joint Petition and this misnamed CLEC – and potentially also CMRS – "Safety Mechanism."

I. THE USTA'S PROPOSED BURDEN-SHIFTING MECHANISM WOULD ESTABLISH A NEW BARRIER TO COMPETITIVE ENTRY BY ELIMINATING THE NATIONAL UNE LIST.

The CMRS Carriers urge the Commission to view the USTA proposal in light of the RBOCs' continuing efforts to avoid their obligations under the 1996 Act. The RBOCs have aggressively stonewalled their obligations to provide UNEs from the start, and now, under the guise of providing an unwelcome "safety net" for competitive carriers, the RBOC-led USTA proposes to eliminate the fundamental requirement that *all* UNEs be provided on a national basis. Even a cursory review of the USTA's euphemistic "CLEC Safety Mechanism"⁷ reveals that it is reality, a bed of thorns; it would simply erect a new barrier to successful competitive entry.

⁶ Even Qwest Communications Corporation ("Qwest") opposes the petition, albeit on procedural, not substantive grounds. See Qwest Comments at 1. However, a significant segment of the USTA, its "CLEC Counsel," comprised of Qwest, CLECs and a number of smaller ILECs, have filed substantive comments in opposition to the RBOC petition.

⁷ The USTA's proposal for a safety net directed only to its "CLEC" competitors is further evidence of the RBOCs' refusal to acknowledge and accept their equal obligation to provision UNEs to all requesting telecommunications carriers – including CMRS carriers.

The USTA seeks to replace the existing unambiguous ILEC Section 251(c)(3) obligations with a rebuttable presumption that establishes yet another barrier to competitive entry,⁸ arguably in violation of the 1996 Act. The proposal shifts to requesting carriers the burden of substantiating that they are impaired by the lack of access to high-capacity loops and dedicated transport UNEs. By its design, the approach shifts the burden of proof to the very carriers who are in most need of access to UNEs because they have not yet overcome their significant competitive disadvantages.

As the Commission's rules and orders currently stand, the burden is on the ILECs – but, only after the halfway completed three year quiet period – to demonstrate that competitive telecommunications carriers will no longer be impaired without access to certain UNEs. As the Commission has stated, “Section 251(c)(3) of the Act places an *affirmative duty* on the ILEC” to provide UNEs.⁹ Although the Commission considered, but declined to implement, market-by-market *exceptions* to the ILECs' duty to provide national UNEs,¹⁰ it certainly did not propose the non-sequitor alternative that the USTA now commends to turn the impairment test into a rebuttable presumption of no-impairment under which the competitor must prove that impairment exists.

The USTA suggests that it would work with the Commission to adopt a procedure for implementing the safety net that would be “expeditious and fair” to *all* parties.¹¹ Creation of such a process, however, cannot and will not save the fundamentally flawed underlying approach. The proposal is nothing but an untimely effort to dismantle the

⁸ USTA Comments at 17.

⁹ *UNE Remand Order* at 3737, ¶ 81 (emphasis added).

¹⁰ *Id.* at 3752, ¶ 120.

national UNE model that the Commission viewed as essential to provide competitive carriers with economies of scale, to inject badly needed predictability in financial markets, to facilitate the states' efforts to arbitrate interconnection agreements, and to reduce the likelihood of litigation.¹² By its very nature, this proposed mechanism would require those very carriers who can least afford it to litigate access to ILEC UNEs. The USTA proposal is inconsistent with the intent of Congress and the rules of the Commission, and it should be summarily rejected.

II. THE COMMISSION SHOULD AFFIRMATIVELY ENFORCE ITS RULES TO DISCOURAGE SIMILARLY PREMATURE AND FLAWED FUTURE PETITIONS.

Review of the comments filed in this proceeding raises the same questions over and over: Should the Commission even have to entertain such a facially defective Joint Petition on the merits? Are existing Commission procedures too tolerant of such petitions when they are the subject of a potentially dispositive motion to dismiss? As Mpower Communications Corporation ("Mpower") cautioned in support of NewSouth Communications' Motion for Dismissal of the Joint Petition, financially constrained CLECs and other interested parties were nevertheless forced to invest valuable time and resources in responding to a transparent anti-competitive tactic that should never have been sanctioned by putting the Joint Petition on Public Notice.¹³ The goals of local competition would be better served by informing the RBOCs that their request for relief

¹¹ USTA Comments at 17.

¹² *UNE Remand Order*, at 3751 ¶ 117.

¹³ May 25, 2001 Letter from Mpower to Ms. Michelle Carey, Chief, Policy & Program Planning Division, Common Carrier Bureau, Federal Communications Commission.

had been previously considered and rejected in the Commission's *UNE Remand Order*, and that the three-year quiet period will be observed.

Now that the Commission has sought comment on the Joint Petition, however, the question becomes how the Commission can avoid the future filing of similar premature petitions. The CMRS Carriers urge the Commission to reinforce – not undermine – the *UNE Remand Order*. Sanctioning this untimely RBOC effort by granting any of the requested relief will encourage the RBOCs to return again and again until the UNE construct no longer serves its intended purpose. The current rate of attrition among CLECs, however, suggests that the RBOCs need no such encouragement.

In the *UNE Remand Order*, the Commission vowed not to entertain *ad hoc* petitions of its decision. If the Commission were to grant the RBOCs' relief in the instant forum, it would establish a highly undesirable precedent that would encourage the filing of potentially innumerable subsequent petitions. As the commenting parties make clear, the Joint Petition merely raises issues that the Commission has previously addressed.¹⁴ To the extent the RBOCs attempt to rely on "changed circumstances," their case provides better support for denial, not grant, of their request.¹⁵ Most important, grant of this petition would subvert the enforceability of the Commission's administrative rules, by

¹⁴ See AES Comments at 11 (RBOCs recycle "fiber nearby" argument), Broadslate Comments at 26 (Commission already determined existence of tariffed services not substitute for UNEs), and CLEC Coalition Comments at 6 ("Commission considered similar arguments when it initially established list of mandatory UNEs), and of XO Communications, Inc. Comments at 2 (Commission already included high capacity loops in definition of loop).

¹⁵ See Comments of AT&T at 3 (only material change is CLECs market on verge of collapse), Competitive Telecommunications Carrier Association Comments at 3 (more important than ever that competitive carriers have access to UNEs), and El Paso Networks, LLC and Global Broadband, Inc. Comments at 15 (market conditions declined considerably).

complicating the ongoing reconsideration and appellate review of the *UNE Remand Order* under existing review procedures.¹⁶

Even though the Commission adopted the national list and a reasonable quiet period before its next review, that which it feared is already beginning to happen: competitors are being forced to “produce voluminous amounts of data and participate in multiple proceedings.”¹⁷ Grant of the Joint Petition could cause this and further significant harm to still-nascent local competition that Congress sought to develop. In seeking additional Commission enforcement power from Congress,¹⁸ Chairman Powell has stated that the Commission must exercise the vigilance necessary to ensure that ILECs meet their statutory obligations.¹⁹ At this critical time in the development of competitive local telecommunications markets, the Commission should make emphatically clear that it can and it will enforce its rules and orders. The Commission should send a strong message that it is time to comply with the 1996 Act and the Commission’s implementing regulations.

¹⁶ Thirteen parties filed for reconsideration of the *UNE Remand Order* on February 17, 2000. The order also is under review by the Court of Appeals for the District of Columbia Circuit (*USTA v. FCC*, Case Nos. 00-1016 and 00-1025).

¹⁷ *UNE Remand Order* at 3756 ¶ 130.

¹⁸ Powell Optimistic about Chances for Enforcement Legislation, *TR Daily*, May 21, 2001, <http://www.tr.com/tronline/trd/2001/td052101.htm>.

¹⁹ Powell Sends “Wish List” of New FCC Enforcement Tools to Key Lawmakers, *TR Daily*, May 7, 2001, <http://www.tr.com/tronline/trd/2001/td042401/td042401.htm>.

III. THE COMMISSION SHOULD UNDERTAKE AGGRESSIVE ENFORCEMENT OF ITS RULES BY DIRECTING THE ILECS TO COMPLY IMMEDIATELY ON A NONDISCRIMINATORY BASIS WITH THE *UNE REMAND ORDER* AS TO CMRS CARRIERS AND BY CLARIFYING THAT RESTRICTIONS ON ACCESS TO CERTAIN UNE COMBINATIONS BY INTEREXCHANGE CARRIERS DO NOT APPLY TO CMRS CARRIERS.

The Commission should actively enforce the *UNE Remand Order* (and the underlying mandate of the 1996 Act) to combat the filibustering of the RBOCs to prevent the CMRS Carriers from obtaining UNEs. Only a few months following adoption of the *UNE Remand Order*, a group of CMRS carriers initiated individual UNE requests with various RBOCs and sought Commission intervention to obtain RBOC provisioning of UNEs. Such resistance has continued, however, as illustrated in the *ex parte* filings attached to these Joint Reply Comments. Specifically, April 13, 2001 and May 16, 2001 VoiceStream *ex parte* letters to the Commission detail some of the efforts the CMRS industry has taken to obtain the Commission's assistance to enforce the ILECs' Section 251(c)(3) obligations.²⁰ Nextel supports these VoiceStream efforts, and as stated in its initial comments, intends further to pursue conversion of its special access arrangements to UNEs.²¹

Other telecommunications carriers face roadblocks similar to those of the CMRS carriers. For example, NuVox, Inc., a facilities-based CLEC, explains how it is unable to obtain UNEs directly from the RBOCs, but must order them as special access circuits and then undergo the timely and barrier-ridden effort to convert them to UNEs.²² If alternative high-capacity facilities were as ubiquitously available as the RBOCs

²⁰ See, Exhibits I and II, respectively.

²¹ See Nextel Comments at 2.

contend,²³ obtaining UNEs or UNE conversions would not be so difficult – or even necessary – because competition for such services would force the ILECs to price and provision even alleged “substitute” tariffed services on a competitive basis. To the contrary, parties to this proceeding offer ample evidence that the pricing and provisioning of special access confirms that alternative sources to ILEC high-capacity UNEs are extremely rare.

For example, many commenting carriers provide data illustrating the extraordinary cost differences between UNE and special access prices.²⁴ WorldCom – a significant user of ILEC facilities who might be expected to exert market leverage in ordering competitive services – reports the decline in the RBOC performance of provisioning special access services.²⁵ Such market data unequivocally refutes the USTA’s bold contention that “[t]he market for special access services is competitive.”²⁶ If it were, the ILECs would provision even tariffed high-capacity services at prices and at service levels that approximate UNE rates and customer service performance of competitive markets.²⁷ Indeed, as AES Communications, LLC (“AES”) points out, RBOCs’ price cap filings speak for themselves. So long as RBOCs continue to price

²² See Broadslate Comments, Affidavit of Brian L. Butler at 7-9.

²³ Joint Petition at 10-14 and 18-23.

²⁴ See WorldCom Comments at 22 and Adelphia Business Solutions, Inc. Comments at 1 (special access twice the price of UNEs); Broadslate Comments at 28 (confirming five-fold increase); and AES Comments at 7 (special access premium over UNEs ranges from 150-750%).

²⁵ WorldCom Comments at 12.

²⁶ USTA Comments at 23.

²⁷ Cbeyond Communications, LLC; CTC Exchange Services, Inc.; e.spire Communications, Inc.; Inter-media Communications Inc.; KMC Telecomm Holdings, Inc.; Net2000 Communications, Inc.; and NuVox, Inc. (“CLEC Coalition”) Comments at 20.

their special access and transport services at or near the top of the cap,²⁸ their claims that competition and/or ubiquitous alternatives exist, appear hollow under even the most basic economic analysis. In reality, the motivation of the RBOCs in denying access to UNEs and/or seeking the removal of UNEs is simply to preserve their “enormous special access profits”²⁹ and their monopoly market share. Under today’s market conditions, however, it is clearly premature and would do great harm to local competition if the Commission were to eliminate any UNE provisioning requirements.

NuVox claims that “[s]pecial access is the opium of the LECs. It is a nasty habit financed on the backs of competitors and consumers.”³⁰ With approximately 12,000 mobile base stations across the United States today, VoiceStream estimates that its network costs are increased by greater than \$15 million each year due to its being denied UNE alternatives to special access facilities by the ILECs.³¹ The Commission must respond to the fact that the ILECs continue to profit at the expense of consumers and competition,³² while, by contrast, the capital markets have essentially stopped funding their competitors.³³ According to a summary of a PricewaterhouseCoopers client report, local exchange carriers and the fiber optic markets are already in financial distress, but

²⁸ AES Comments at 7.

²⁹ CLEC Coalition Comments at 4.

³⁰ *Id.* at 15, n. 26.

³¹ See Exhibit I, Attachment A.

³² CLEC Coalition Comments at 30 (“Consumers benefit from more competition and not from more ILEC special access profits”).

³³ AT&T Comments, “An Economic and Engineering Analysis of Dr. Robert Crandall’s Theoretical ‘Impairment’ Analysis,” at 8.

the mobile/wireless sector may face a similar financial fate in early 2002.³⁴ Requiring immediate compliance with the *UNE Remand Order*, including imposing sanctions for non-compliance such as substantial fines, could help avert an extension of the current financial crisis in the CLEC market to the mobile/wireless sector. The CMRS Carriers thus seek Commission relief through its enforcement of the ILECs' UNE obligation.

The Commission must use this opportunity to reiterate its commitment to local competition provided by *all* types of telecommunications service providers and exert its authority to demand *complete and immediate* ILEC compliance with Section 251(c)(3) of the 1996 Act. The Commission should clarify that the interexchange carrier exceptions it carved out in the *Supplemental Clarification Order*,³⁵ do not apply to CMRS carriers. The Commission must require that the ILECs – without any delay – convert *all* of requesting CMRS carriers' special access arrangements to UNEs and/or UNE combinations. It should require that any ILEC that has intentionally delayed or forestalled the provisioning of UNEs or the conversion of special access arrangements issue to the requesting carrier a credit for the difference between the UNE rate and the special access tariffed rate the ILEC forced it to pay – retroactively to the date of the carrier's initial request. The Commission cannot allow the ILECs to treat CMRS carriers like second class citizens – especially when the 1996 Act so clearly recognizes them as “telecommunications carriers,” and therefore, entitled to UNE access.

³⁴ Report Sees Further Difficulties For Telecom Industry, <http://navigation.helper.realnames.com/framer/1/112/default.asp?realname=American+Bankruptcy+Institute&url=http%3A%2F%2Fwww%2Eabiworld%2Eorg%2F&frameid=1&providerid=112&uid=30214326>, June 22, 2001.

³⁵ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, *Supplemental Order Clarification*, 15 FCC Rcd 9587, 9620 (2000) (“*Supplemental Order Clarification*”).

The Commission should deny the relief the RBOCs now seek and postpone any review of the elimination of UNEs from the mandatory national list until its pre-established three-year review. Most important, it must not fail to include CMRS carriers in any future analysis in which it engages to modify the UNE list. Although the Commission originally articulated its impair standard in terms of “requesting carriers,”³⁶ in the *UNE Remand Order*, the Commission refers to CLECs almost exclusively as examples of carriers that require UNE access, and it refers to wireless carriers only in the context of whether the availability of their facilities can serve as a viable alternative to the facilities of the incumbent LECs.³⁷ The terms “CMRS carrier” is notably absent from the Order altogether.

The Commission must proactively include CMRS carriers in any analysis of the needs of telecommunications carriers. At the triennial review – or anytime the Commission reconsiders the mandatory list of UNEs – it must require the ILECs to confirm explicitly whether CMRS carriers – in *addition to CLECs* – will be impaired by the elimination of specific UNEs. It must require that any data that the ILECs provide to support their claims that “telecommunications carriers” no longer require certain UNEs explicitly includes an analysis of the CMRS industry. Failure to grant CMRS carriers the relief *they* require will substantially impair what today remains a vibrant sector of the telecommunications industry.

³⁶ *UNE Remand Order* at 3725, ¶ 51. (“[T]he failure to provide access to a network element would “impair” the ability of a *requesting carrier* to provide the services it seeks to offer if, taking into consideration the availability of alternative elements outside the incumbent’s network, including self-provisioning by a *requesting carrier* or acquiring an alternative from a third-party supplier, lack of access to that element materially diminishes a *requesting carrier’s* ability to provide the services it seeks to offer.”) (emphasis added)

³⁷ *Id.* at 3758, ¶ 378; at 3782, ¶ 188; at 3793, ¶ 216; and at 3855, ¶ 353.

IV. CONCLUSION

The Commission should deny the relief the RBOCs seek in the Joint Petition. VoiceStream and Nextel urge the Commission to work with the CMRS Carriers and other requesting telecommunications carriers to demand that the ILECs provide *all* nationally mandated UNEs to *all* requesting telecommunications carriers now and in the future. The Commission must not eliminate any UNEs from the national list until the ILECs make a substantial showing, supported by convincing evidence, that *all* competitive telecommunications carriers – including CMRS carriers – will not be impaired by the elimination of access to that particular UNE – in any serving wire center in any metropolitan or rural serving area throughout each ILEC's footprint.

Respectfully submitted,



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June 25, 2001

EXHIBIT I

**April 13, 2001 *Ex Parte* Letter from VoiceStream Wireless Corporation to Ms.
Michele Carey, Chief, Policy & Program Planning Division, Common Carrier
Bureau, Federal Communications Commission**

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Michelle Carey, Chief
Policy & Program Planning Division
Common Carrier Bureau
Federal Communications Commission
445 12 Street, S.W., Room 5C122
Washington, DC 20554

Dear Ms. Carey:

Thank you for meeting with VoiceStream Wireless Corporation ("VoiceStream") and AT&T Wireless Services ("AWS")¹ on March 27, 2001, to discuss the efforts of the CMRS industry to convert special access facilities obtained from incumbent local exchange carriers ("ILECs") to cost-based unbundled network elements ("UNEs"). Although CMRS carriers are entitled to purchase such facilities at UNE rates pursuant to Section 251 of the 1996 Telecommunications Act ("96 Act"), to date, the ILECs have resisted converting these facilities from special access tariffed rates to UNE pricing. As you requested at our meeting, this letter provides a description of the type of facilities VoiceStream has attempted to purchase from ILECs, the obstacles it has faced, and the impact such resistance has had on its business. We will begin by summarizing the legal basis entitling CMRS providers to obtain UNE pricing.

The Legal Framework for CMRS Request for UNE Pricing:

Section 251(c)(3) of the 96 Act requires ILECs "to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the

¹ Since VoiceStream has reviewed and concurs in the letter on this same matter that AWS sent you on April 6, 2001, it will not reiterate AWS's position in this letter.

requirements of this section and section 252.”² Under the 96 Act and pursuant to Commission orders, CMRS providers are “telecommunications carriers” that provide a “telecommunications service.”³ These definitions, on their face, apply equally to *any* telecommunications carrier for the provision of *any* telecommunications service, and in its *Local Competition Order*, the Commission expressly confirms that “CMRS providers are telecommunications carriers.”⁴ Since ILECs routinely provide themselves special access as a combination of loop and transport, they are obligated by the 96 Act and the Commission’s *UNE Remand Order* to provide these facilities as UNE combinations to CMRS providers at UNE prices.⁵

Neither the technology that a particular telecommunications carrier deploys nor the way in which it utilizes UNEs has any effect on its right to obtain UNEs or UNE combinations for the provision of local service. The Commission recognizes that ILECs must provide access to UNEs “in a manner that allows requesting carriers to combine such elements as they choose”⁶ Moreover, ILECs “may not impose restrictions upon the uses to which requesting carriers put such network elements.”⁷ Thus, even if CMRS carriers do not use UNEs in configurations identical to those of competitive local exchange carriers (“CLECs”), the 96 Act still entitles them to purchase the same facilities at the same UNE rates. To permit otherwise would turn the entire regulatory framework established by the 96 Act, the *Local Competition Order*, and the Commission’s regulatory policy on its head. Only certain classes of facilities-based competitive carriers would benefit from cost-based pricing of UNEs, to the detriment of others, in contravention of the “national policy of the United States to encourage the provision of new technologies and services to the public.”⁸ The Congress charged the Commission to

² 47 U.S.C. § 251(c)(3).

³ *Id.*, at § 3(44) and (46).

⁴ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, 11 FCC Rcd 15499, 15517 (1996) (“*Local Competition Order*”).

⁵ *Implementation of the Local Competition Provision of the Telecommunication Act of 1996*, CC Docket 96-98, Third Report and Order, 15 FCC Rcd 3696, 3909 (2000) (“*UNE Remand Order*”). The Commission notes that ILECs “routinely combine loop and transport for themselves,” and that they “routinely provide the functional equivalent of the Enhanced Extended Link (“EEL”) through their special access offerings,” and thus must make the same facilities available to requesting carriers. *Id.*

⁶ *Local Competition Order*, at 15514.

⁷ *Id.*, at 15515.

⁸ 47 U.S.C. § 157(a).

“establish competitively neutral rules – (A) to enhance access to advanced telecommunications services. . . .”⁹ Allowing ILECs to deny UNEs to CMRS carriers would convert a technology-neutral regulatory policy into a technology-dependent policy, thereby discouraging deployment of alternative technologies and ultimately, limiting consumer choice.

In response to ILEC concerns that premature elimination of interexchange carrier (“IXC”) access charge revenues could substantially harm the ILECs,¹⁰ the Commission issued a supplemental order in the Local Competition docket, proscribing IXCs from substituting UNE combinations for “special access services unless they provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer.”¹¹ The Commission later clarified the three criteria that a requesting carrier must meet in order to be deemed to provide “a significant amount of local exchange service.”¹²

However, ILEC rejections of CMRS carriers’ requests for UNE-priced facilities based on CMRS carriers’ failure to meet these CLEC-designed criteria are wholly inappropriate. These use restrictions were designed for wireline CLECs and were never intended to be literally applied to requesting CMRS carriers. First, the risk of IXC arbitrage was the justification for the criteria established in the *Supplemental Order Clarification*. CMRS carriers were never the focus of ILEC concerns, nor of this Commission’s Order. Any effort to impose these inapplicable criteria upon CMRS carriers is entirely unwarranted. CMRS carriers do not offer “local exchange service.” Nor do they “collocate” facilities in ILEC central offices.¹³ CMRS carriers offer local service defined on the basis of the Major Trading Areas they serve, and not central office-defined telephone exchanges. Thus, CMRS usage of the ILECs’ loop and transport

⁹ 47 U.S.C. § 254(h)(2)(A). Section 706 also requires the Commission to encourage deployment of advanced telecommunications capability – “without regard to any transmission media or technology” – to all Americans by providing competition in local telecommunications markets. See, 47 U.S.C. § 706(a) and (c)(1).

¹⁰ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Supplemental Order*, 15 FCC Rcd 1761, 1762 (1999) (“*Supplemental Order*”).

¹¹ *Supplemental Order*, at 1764,

¹² *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Supplemental Order Clarification*, 15 FCC Rcd 9587, 9620 (2000) (“*Supplemental Order Clarification*”).

¹³ Letter from AWS, VoiceStream, and US Cellular to Federal Communications Commission Commissioners (April 12, 2000), p. 3.

facilities is not at all comparable to IXC's, and does not raise any arbitrage issues as are raised with respect to IXC's who might attempt to obtain such facilities under the premise of providing local exchange service.

With respect to the conversion of special access circuits to UNEs, CMRS providers are not comparable to IXC's, and therefore, are entitled to UNE conversion without any self-certifying process required under the *Supplemental Order Clarification*. Thus, VoiceStream respectfully asks the Commission (1) to advise the ILECs that they must provide CMRS carriers access to UNE pricing, and (2) to clarify that the three-criteria test of the *Supplemental Order Clarification* does not apply and has never applied to CMRS carriers.

Description of the Facilities VoiceStream Has Attempted To Purchase

VoiceStream (through its predecessor-in-interest, Omnipoint Communications) first contacted Verizon Telephone Companies ("Verizon") by letter over one year ago, on February 15, 2000,¹⁴ requesting that information on and prices for converting DS1 Special Access facilities between its switching locations and base stations to EELs. After significant delay and numerous requests by VoiceStream for a reply to its letter, Verizon finally responded on November 2, 2000,¹⁵ rejecting VoiceStream's request to convert its special access facilities to EELs. Verizon claims that VoiceStream is unable to meet any of the three criteria of the *Supplemental Order Clarification* because the circuits in question terminate, not to end user customers, but to VoiceStream base stations, and that "on this basis alone, Voicestream cannot meet the 'significant amount of local exchange service' requirement under any of the three circumstances."¹⁶ Verizon refused to "process any Voicestream orders for such conversions."¹⁷

VoiceStream requested EEL conversions initially from Verizon because its business plan was most effected by its failure to obtain UNE pricing in VoiceStream's Northeast region, particularly in the highly competitive New York State market.

¹⁴ Letter from Mr. Carl J. Hansen, Director – Legal & Regulatory Affairs, Omnipoint Communications, to Mr. Marco Pinque, Bell Atlantic (February 15, 2000). Since VoiceStream has acquired Omnipoint and Bell Atlantic has changed its name to Verizon, we will refer to the entities as VoiceStream and Verizon, respectively

¹⁵ Letter from Chris T. Antoniou, Senior Interconnection Counsel, Verizon, to Douglas G. Bonner, Counsel to VoiceStream, Arent Fox Kintner Plotkin & Kahn, PLLC (November 2, 2000).

¹⁶ *Id.*, p. 1.

¹⁷ *Id.*, p. 2.

Subsequently, VoiceStream and other CMRS carriers sent a letter to the Commission attempting to highlight the potential abuses by the ILECs of CMRS carriers that have since occurred.¹⁸ As the CMRS carriers predicted, the ILECs are now attempting to pursue a “divide and conquer” strategy. Having prevailed against an IXC threat, they are now unfairly holding CMRS carriers to standards designed solely from a network architecture perspective to address arbitrage concerns of facilities-based wireline IXCs. A subsequent event has provided further support that the CMRS carriers’ concerns were warranted. On April 5, 2001, three ILECs, BellSouth Corporation (“BellSouth”), SBC Communications, Inc. (“SBC”), and Verizon, filed a Joint Petition with the Commission in which they seek the elimination of mandatory unbundling of the types of loops and transport facilities that are the subject of this letter.¹⁹ In less than two years since the Commission released the *UNE Remand Order*, these ILECs are opposing the provision of high-capacity loop UNEs or UNE combinations, irrespective of geographic limitations on competitive fiber deployment. The Joint Petition underscores the strength of the ILECs’ resistance to the conversion of special access circuits to UNEs and illustrates the need for the Commission to intervene to ensure that its prior orders on this matter are fully and fairly implemented.²⁰

VoiceStream has recently requested special access conversions from Ameritech, BellSouth, Qwest, SBC, and SNET.²¹ None of the carriers has yet responded to VoiceStream’s requests. However, VoiceStream has little reason to expect responses different from those AWS has received to date from the ILECs it has contacted for the same purpose.²²

The Obstacles VoiceStream Faces

¹⁸ Letter from AWS, VoiceStream, and US Cellular, to Federal Communications Commission (April 12, 2000).

¹⁹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Joint Petition of BellSouth, SBC, and Verizon for Elimination of Mandatory Unbundling of High-Capacity Loops and Dedicated Transport*, CC Docket Nos. 96-98 and 01-____, *Joint Petition*, filed April 5, 2001.

²⁰ VoiceStream will comment further on the *Joint Petition* at the Appropriate Time.

²¹ Letters from Elizabeth Dickerson, Counsel to VoiceStream, to Jennifer Spoehr, Ameritech Corporation; Cris Wilcox, BellSouth Corporation; Brenda Bryson, Qwest Communications International, Inc.; Jim Van Der Beek, Southern New England Telecommunications; and Richard Flatt, SBC Communications, Inc. (April 3, 2001).

²² Letter from Douglas I. Brandon, AWS, to Michele Carey, Chief, Policy & Program Planning Division, Common Carrier Bureau, Federal Communications Commission (April 6, 2001).

To the extent Verizon provides UNEs to other carriers, and not to VoiceStream, it does not comply with its duty [under the Section 271 competitive checklist] to provide “[n]on-discriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1).”²³ When faced with the alternative of obtaining these same physical facilities from an ILEC’s interstate access tariff instead, a CMRS carrier faces additional obstacles besides increased costs. ILEC performance to customers such as VoiceStream under its special access tariffs is not influenced by statutory obligations or state regulations governing unbundled access to network elements, or compliance with the Section 271 competitive checklist.²⁴ When ILECs avoid these unbundling requirements, they deny the purchasing carriers such important safeguards as performance intervals, and liquidated damages established by state commission rules or by negotiated or arbitrated interconnection agreements. These benefits typically are unavailable to retail tariff customers. Thus, when ILECs deny CMRS carriers access to UNEs or UNE combinations that they routinely provide themselves, they also withhold from CMRS carriers essential enforcement remedies, including enforcement proceedings and the ability to address ILEC compliance with the Section 271 checklist on future applications to enter the interLATA market in another state.

As VoiceStream previously has documented amply, its inability to obtain redress for unacceptably poor special access provisioning²⁵ has put it at a significant competitive disadvantage vis-à-vis the ILEC on whose underlying facilities VoiceStream relies.²⁶ Of

²³ See also, 47 U.S.C. § 271(c)(2)(B)(ii) (competitive checklist requirement for Regional Bell Operating Company approval to provide in-region interLATA service).

²⁴ *Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, *Memorandum Opinion and Order*, 15 FCC Rcd 3953, 4126 (1999).

²⁵ Verizon itself recognizes the lower standard it applies to access service provisioning by arguing that special access orders “have nothing to do with the checklist. . . . All of these circuit orders are for special access.” *Application of New York Telephone Company (d/b/a Bell Atlantic-New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc., for Authorization to Provide In-Region, InterLATA Services in New York, Reply Comments in Support of Application by Bell Atlantic-New York for Authorization To Provide In-Region, InterLATA Services in New York*, CC Docket No. 99-295, Reply Appendix A, Volume 1, Tab 1, p. 33, (November 8, 1999).

²⁶ As Omnipoint [VoiceStream] stated in its Reply Comments in the Verizon Section 271 Application proceeding, “Omnipoint [VoiceStream] continues to fail to meet acceptable levels of DS-1 provisioning performance, as shown by [VoiceStream’s] experienced 86% missed FOC dates from May through October, 1999, ranging from 1 to 42 days.”

course, since VoiceStream is broadband PCS provider and as such is a facilities-based competitor to Verizon and other ILECs, the ILECs stand to benefit if VoiceStream does not meet its new customers' expectations, even if the cause is inadequate ILEC provisioning. Customers will simply go elsewhere if their current service is not adequately being provided, in all likelihood to the ILECs' wireless affiliates.²⁷

The Effect of ILEC Resistance on VoiceStream's Business

Without access to UNEs, VoiceStream and other CMRS carriers face the burden of an unnecessarily elevated cost structure resulting from having to pay retail rates (including historic, embedded costs) as opposed to forward-looking cost-based rates. For example, Exhibit A shows the difference between access tariff rates and the UNE rates for DS1 service in three (3) service areas in which VoiceStream operates: Florida, Illinois, and New York. As these data illustrate, the tariff rates are generally two to three times greater than the UNE rates to which VoiceStream is entitled, even when factoring in a potential 40% discount for a term commitment. When competing with wireline carriers for local service business, CMRS carriers are at a significant competitive cost disadvantage relative to both CLEC and ILEC competitors when they must obtain the same facilities at significantly higher retail rates.²⁸

Application of New York Telephone Company (d/b/a Bell Atlantic-New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc., for Authorization to Provide In-Region, InterLATA Services in New York, Reply Comments of Omnipoint Communications, Inc., CC Docket No. 99-295 (November 8, 1999).

²⁷ When ILECs provision loop and transport facilities to CMRS providers from their tariffs and not as UNEs, the disparity between the quality of provisioning works further to the ILECs' advantage. State regulatory commissions often evaluate ILECs' provisioning of UNEs to ILECs' competitors in comparison to their off-tariff provisioning to their customers. Poor provisioning of tariffed services to CMRS providers – who are actually competitors – overstates the ILECs' good treatment of their competitors.

²⁸ VoiceStream is in the process of compiling company-specific data to illustrate its specific cost disadvantage and will submit these data to the Commission when they are available.

Ms. Michele Carey
April 13, 2001
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Conclusion

VoiceStream appreciates the Commission's interest in this matter. We ask that the Commission take whatever action is necessary to ensure that VoiceStream and other CMRS carriers have immediate, non-discriminatory access to UNE pricing for conversion of special access circuits and UNE combinations, similar to that which other facilities-based, local telecommunications providers enjoy.

Sincerely yours,



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cc: Jodie Donovan-May
Tom Navin
Gregory R. Vadas
Stacy Jordon
Carl Hansen

EXHIBIT A
TARIFF/UNE DS1 COMPARISON IN THREE STATES¹

DS1 FACILITY		SBC – Illinois	
	COMPOSITE TARIFF RATE²	AVERAGE UNE RATE³	DIFFERENCE⁴
LOCAL DISTRIBUTION CHANNEL	\$346.00	\$ 80.69	428.80%
CHANNEL MILEAGE TERMINATION ⁵	\$108.00	\$ 16.29	662.98%
CHANNEL MILEAGE/MILE	\$ 36.90	\$ 1.75	2108.57%
Monthly cost of 5 mile circuit from ILEC hub office to cell site	\$327.40	\$105.67	309.83%

DS1 FACILITY		Verizon – New York⁶	
	COMPOSITE TARIFF RATE	AVERAGE UNE RATE⁷	DIFFERENCE
CHANNEL TERMINATION	\$235.13	\$105.30	223.30%
CHANNEL MILEAGE – FIXED	\$ 46.66	\$110.00	44.20%
CHANNEL MILEAGE/MILE	\$ 21.40	\$0.72.00	2972.22%
Monthly cost of 5 mile circuit from ILEC hub office to cell site	\$388.79	\$218.90	177.61%

DS1 FACILITY		BellSouth – Florida⁸	
	COMPOSITE TARIFF RATE	AVERAGE UNE RATE⁹	DIFFERENCE
LOCAL CHANNEL	\$156.67	\$ 43.53	359.91%
INTEROFFICE CHANNEL – FIXED	\$ 80.00	\$ 99.79	80.17%
INTEROFFICE CHANNEL/MILE	\$ 20.33	\$.6013	3381.01%
Monthly cost of 5 mile circuit from ILEC hub office to cell site	\$337.33	\$146.39	230.43%

EXHIBIT A
TARIFF DS1 RATES IN THREE STATES¹⁰
Month to Month Service

Tariff DS1 FACILITY	Ameritech - Illinois¹¹				
	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5
LOCAL DISTRIBUTION CHANNEL	\$255.00	\$268.00	\$275.00	\$326.00	\$346.00
CHANNEL MILEAGE TERMINATION ¹²	\$ 97.50	\$ 99.50	\$ 99.50	\$105.00	\$108.00
CHANNEL MILEAGE/MILE	\$ 26.90	\$ 28.00	\$ 31.10	\$ 34.10	\$ 36.90
Monthly cost of 5 mile circuit from ILEC hub office to cell site	\$584.50	\$607.00	\$629.50	\$706.50	\$746.50

Tariff DS1 FACILITY	Verizon – New York¹³		
	Zone 1	Zone 2	Zone 3
CHANNEL TERMINATION	\$209.11	\$240.77	\$255.51
CHANNEL MILEAGE - FIXED	\$ 46.66	\$ 46.66	\$ 46.66
CHANNEL MILEAGE/MILE	\$ 21.40	\$ 21.40	\$ 21.40
Monthly cost of 5 mile circuit from ILEC hub office to cell site	\$362.77	\$394.43	\$409.17

Tariff DS1 FACILITY	BellSouth – Florida¹⁴		
	Zone 1	Zone 2	Zone 3
LOCAL CHANNEL	\$150.00	\$156.00	\$161.00
INTEROFFICE CHANNEL – FIXED	\$ 75.00	\$ 80.00	\$ 85.00
INTEROFFICE CHANNEL/MILE	\$ 18.00	\$ 21.00	\$ 22.00
Monthly cost of 5 mile circuit from ILEC hub office to cell site	\$315.00	\$341.00	\$356.00

END NOTES

1 Row titles in each table are based on terminology in specific ILEC's tariff.

2 The state composite rate reflects the average of the tariffed zone rates from page 2 of this Exhibit
3 A.

4 Ameritech/TDS MetroCom Illinois Interconnection Agreement, Exhibit PS-I, pp. PS-2 and PS-7.

5 Although term discounts are available for the tariffed rates, the month-to-month tariffed rates are
6 used to simplify comparisons. Even if the ILECs were to discount the monthly rates by as much
7 as 40%, however, the tariffed rates for the illustrative configurations would be 185.90%, 106.57%,
8 and 138.26%, greater than the UNE rates for Illinois, New York, and Florida, respectively.

9 Two Channel Terminations are required if Interoffice Mileage is greater than zero.

10 The Bell Atlantic Telephone Companies offer term discounts under contract.

11 http://www.dps.state.ny.us/UNE_Rates.htm

12 BellSouth Telecommunications Tariff F.C.C. NO. 1, Section 7.5.9 Plan B, Effective August 11,
13 2000.

14 BellSouth/AugLink Florida Interconnection Agreement, Attachment 3, Exhibit A, p. 5 and Exhibit
C, p. 5.

15 Row titles in each table are based on terminology in specific ILEC's tariff.

16 Ameritech Operating Companies Tariff F.C.C. NO. 2, Section 7.5.9(B), Effective November 18,
17 2000.

18 Two Channel Terminations are required if Interoffice Mileage is greater than zero.

19 Bell Atlantic Telephone Companies Tariff F.C.C. NO. 1, Section 7.5.9, Effective February 24,
20 2001.

21 BellSouth Telecommunications Tariff F.C.C. NO. 1, Section 7.5.9, Effective August 11, 2000.

EXHIBIT II

**May 16, 2001 Ex Parte Letter from VoiceStream Wireless Corporation to Ms.
Michele Carey, Chief, Policy & Program Planning Division, Common Carrier
Bureau, Federal Communications Commission**

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L.L.P.

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1875 CONNECTICUT AVENUE, N.W.

SUITE 1200

WASHINGTON, DC 20009-5728

May 16, 2001

VIA FACSIMILE AND U.S. MAIL

Michelle Carey, Chief
Policy & Program Planning Division
Common Carrier Bureau
Federal Communications Commission
445 12 Street, S.W., Room 5C122
Washington, DC 20554

Dear Ms. Carey:

On behalf of VoiceStream Wireless Corporation ("VoiceStream"), we are responding to your verbal request, relayed to us by Michael Pryor of Mintz, Levin, Cohn, Ferris, Glovesky, and Popeo, counsel for AT&T Wireless, for additional information on VoiceStream's efforts to obtain UNE pricing for special access facilities it purchases from the Regional Bell Operating Companies ("RBOCs").

With respect to this particular matter, VoiceStream corresponded in writing with the RBOCs on two separate occasions. On February 15, 2000, Mr. Carl J. Hansen, Director – Legal & Regulatory Affairs for Omnipoint Corporation, which was merged into VoiceStream, wrote to the Bell Atlantic Account Manager, Mr. Marco Pinque, asking for a "product briefing." In particular, Mr. Hansen asked for information on the following topics:

- Availability of EELs in all Bell Atlantic jurisdictions
- Technical differences between EELs and Special Access DS1 (if any)
- Pricing of EELs and components of pricing
- Sample comparisons of EEL vs. Special Access pricing for identical 1.544 Mbps circuits
- Ordering processes for EELs compared to Special Access
- Volume and term discounts (if any) for EELs
- Conversion of Existing Special Access facilities to EEL pricing
- Penalties for early termination of Special Access when converting to EELs
- Contract terms and conditions to include EELs in current agreements.

Ms. Michele Carey
May 7, 2001
Page 2

Neither Bell Atlantic nor Verizon provided any of the requested information. Instead, Verizon's attorney responded by letter on November 2, 2000, as detailed in VoiceStream's April 13, 2001 letter to the Commission. Verizon answered by refusing to process any orders for any VoiceStream conversions because "VoiceStream is unable to meet any of the three criteria of the *Supplemental Order Clarification*. . . [, and] on this basis alone, VoiceStream cannot meet the 'significant amount of local exchange service' requirement under any of the three circumstances."¹

On April 3, 2001, VoiceStream sent letters to five other carriers requesting conversion of all "existing special access facilities to Enhanced Extended Links ("EELs"), Unbundled Network Elements ("UNEs"), and/or UNE combinations (collectively, "UNEs"), as appropriate." These April 2001 letters clearly request conversion of special access circuits to UNE-based pricing, either as EELs, as dedicated transport, or as a combination of UNEs. A template of the identical letter sent to the following carriers is attached to this letter for your review:

Mr. Richard Flatt
SBC Communications, Inc.
Four Bell Plaza
Room 402.34
Dallas, TX 75202

Mr. Cris Wilcox
BellSouth Corporation
2872 Woodcock Boulevard, Suite 300
Chamblee, GA 30341

Ms. Brenda Bryson
QWEST Communications International, Inc.
1600 7th Avenue, Room 1806
Seattle, WA 98191

Mr. Jim Van Der Beek
Southern New England Telecommunications Corporation
530 Preston Avenue, 3rd Floor
Meriden, CT 06450

¹ Letter from Chris T. Antoniou, Senior Interconnection Counsel, Verizon, to Douglas G. Bonner, Counsel to VoiceStream, Arent Fox Kintner Plotkin & Kahn, PLLC (November 2, 2000).

Ms. Michele Carey
May 7, 2001
Page 3

Ms. Jennifer Spoehr
Ameritech Corporation
2000 W. Ameritech Center Drive
Suite 2H19E
Hoffman Estates, IL 60196

Although neither has substantively responded to VoiceStream's request, BellSouth verbally confirmed receipt of VoiceStream's letter,² and Qwest filed a written confirmation of the same.³ SBC replied on May 4, 2001, jointly on behalf of its affiliated Ameritech, SNET, and Southwestern Bell operating companies. A copy of this letter is provided herewith.

SBC responds that it "do[es] not necessarily agree with all of [VoiceStream's] characterization of the FCC's *Third Report and Order*,"⁴ and it dodges direct responses to many of VoiceStream's requests. For example, it merely directs VoiceStream to the SBC Web site that describes the conversion process, <https://clec.sbc.com> and to a letter describing the conversion process located at <https://clec.sbc.com> or <http://www.sbcprimeaccess.com>. It is readily apparent that SBC does not intend to facilitate such conversions. Indeed, its requirement that VoiceStream self-certify its compliance with the significant local usage requirements of the *Supplemental Order Clarification*,⁵ effectively precludes VoiceStream from obtaining any UNE priced circuits from any of the operating companies of SBC that now serve nearly half of all customers nationwide.⁶ Based on SBC's statement that it does not agree with

² Leah Perry Cooper (404) 335-0764, an attorney for BellSouth, contacted VoiceStream a few days after receiving the letter.

³ Although VoiceStream indicated in its letters that "VoiceStream wishes to convert *all* such Special Access facilities," the May 2, 2001 letter from Daniel G. Yamagishi, Senior Attorney for Qwest, asked VoiceStream to "specifically identify which special access circuits it is seeking to convert." Mr. Yamagishi additionally indicated that Qwest's account team is in the process of preparing a response to other questions posed in our April 3, 2001 letter.

⁴ Letter from Mr. Thomas Pajda to Elizabeth Dickerson, May 4, 2001 ("*SBC Letter*"), p. 2.

⁵ *SBC Letter*, p. 3.

⁶ SBC's operating companies provide service in 11 states: Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Wisconsin, and Texas, which together have a combined population in excess of 43% of the total population of the United States. See, <http://www.census.gov/population/www/estimates/statepop.html>.

VoiceStream's interpretation of the *Third Report and Order*, VoiceStream is not hopeful that it could achieve UNE pricing by pursuing the published conversion process, as SBC recommends.

VoiceStream also requested "a sample comparison of UNE vs. Special Access pricing for identical 1.544 Mbps circuits." Although SBC carefully prices out the tariffed rate for an Intrastate DS1 in Chicago to a ring node ten miles away, it appears unable to provide UNE pricing for the same configuration. Instead it notes that the rate would be calculated "either under the state tariff, or by accepting the terms of an existing Interconnection Agreement via Most Favored Nation (MFN) procedures, or by negotiating an amendment to the existing VoiceStream Interconnection Agreement which currently does not contain UNE rates."⁷ VoiceStream has struggled for an explanation for SBC's failure to price-out the sample circuit at UNE rates, other than the belief that SBC is unwilling to concede the significant price difference between the special access and UNE rates.⁸

Such inadequate responses are typical of the barriers that VoiceStream faces when dealing with the RBOCs. In the year and a half since the Commission established its list of national UNEs,⁹ VoiceStream has yet to achieve non-discriminatory access to UNE combinations. Moreover, if the RBOCs convince the Commission that high-capacity loops and dedicated transport should not be subject to mandatory unbundling, VoiceStream will be deprived of essential UNEs on a going-forward basis. VoiceStream respectfully seeks Commission assistance in resolving this matter.

⁷ *SBC Letter*, p. 3.


⁸ VoiceStream is particularly troubled by SBC's lack of responsiveness to this request. In August, 1996, Ameritech filed tariffs in Illinois "to establish prices and other terms and conditions for interconnection, UNEs and local transport and termination that **would be available for purchase by all local carriers (including those not party to an interconnection agreement with Ameritech Illinois).**" *Illinois Commerce Commission on its Own Motion Investigation into Forward-Looking Cost Studies and Rates of Ameritech Illinois for Interconnection, Network Elements, Transport and Termination of Traffic; Illinois Bell Telephone Company Proposed Rates, Terms and Conditions for Unbundled Network Elements*, Docket 96-04876 Consolidated 96-0569, *Second Interim Order*, 1998 Ill. PUC LEXIS 109, February 17, 1998, p. 1 (emphasis added). VoiceStream submits that such rates should have been readily available to SBC to complete the rate comparison VoiceStream requested.

⁹ In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98 (FCC 99-370), Supplemental Order (rel. November 24, 1999).

Ms. Michele Carey
May 7, 2001
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Please let us know if we can provide any further information.

Sincerely yours,


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Chris Sykes (via U.S. Mail)
Carl Hansen (via U.S. Mail)
Michael Pryor (via U.S. Mail)

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TASHKENT

BISHKEK

ALMATY

BEIJING

April 3, 2001

VIA FACSIMILE AND U.S. MAIL

Mr. Cris Wilcox
BellSouth Corporation
2872 Woodcock Boulevard
Suite 300
Chamblee, GA 30341

Re: Conversion of Special Access Facilities to Unbundled Network Elements

Dear Cris:

We are writing on behalf of VoiceStream Wireless Corporation ("VoiceStream"), who currently purchases from BellSouth Corporation ("BellSouth") Special Access facilities on which VoiceStream provides transport services in BellSouth's region. VoiceStream wishes to convert all such Special Access facilities to Enhanced Extended Links ("EELs"), Unbundled Network Elements ("UNEs"), and/or UNE combinations (collectively, "UNEs"), as appropriate.

Section 251(c)(3) of the Telecommunications Act of 1996 ("1996 Act") requires incumbent local exchange carriers ("ILECs"):

to provide, to any requesting telecommunications carrier for the provision of telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An [ILEC] shall provide such unbundled

network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.¹

In its "*Local Competition Order*," the Federal Communications Commission ("FCC") explicitly holds that CMRS providers, such as VoiceStream, are "telecommunications carriers," and therefore, "requesting carriers" to whom the benefits of section 251(c) of the 1996 Act enure.² The FCC also confirms that existing combinations of UNEs (including the "EEL") are the "functional equivalent" of special access offerings, and that "requesting carriers" are entitled to obtain them at UNE prices.³

As soon as feasible, VoiceStream wishes to convert its Special Access facilities to EELs, UNEs, and UNE combinations (collectively, "UNEs"), as appropriate. Please review the facilities BellSouth provides VoiceStream throughout BellSouth's region and respond in writing to the following questions, within the next thirty days:

- On a LATA-specific basis, are UNEs available to replace the Special Access facilities VoiceStream currently purchases from BellSouth?
- What, if any, technical differences exist between UNEs and BellSouth's Special Access DSIs that VoiceStream purchases?
- On a state-specific basis, please provide the price of these UNEs and their underlying components. Please consider this a request pursuant to 47 U.S.C. § 251(c)(3).
- Please provide a sample comparison of UNE vs. Special Access pricing for identical 1.544 Mbps. circuits.
- How do the ordering processes for UNEs and Special Access facilities differ? How do ordering intervals differ?

¹ 47 U.S.C. § 251(c)(3).

² *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 96-98, CC Docket No. 95-185, First Report and Order, 11 FCC Rcd 15499, 15517, (1996) ("*Local Competition Order*").

³ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Notice of Proposed Rulemaking*, CC Docket No. 96-98, 15 FCC Rcd 3696, 3909-10, (1999).

Mr. Cris Wilcox
April 3, 2001
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- Are volume and term discounts available for UNEs?
- What is the process for converting Special Access facilities to UNE pricing? How quickly can such a conversion occur?
- What, if any, penalties exist for early termination of VoiceStream's Special Access facilities, when converting to UNEs? Would non-recurring charges apply?
- Please provide standard contract terms and conditions that would allow VoiceStream to include access to the UNEs necessary to replace Special Access arrangements under its existing interconnection agreements throughout the BellSouth region.

Please do not hesitate to contact Doug Bonner or Elizabeth Dickerson with questions on this matter. In addition, we would appreciate hearing from you if you will be unable to respond to this request, or any specific portion thereof, within thirty days. We look forward to working with you on this matter and will call shortly to discuss.

Sincerely,



Douglas G. Bonner
Elizabeth Dickerson

cc: Mr. Bob Calaff
Ms. Chris Sykes



Thomas A. Pajda
Senior Counsel

SBC Communications, Inc.
One Bell Plaza, Room 2900
Dallas, Texas 75202
Phone 214 464-5533
Fax 214 464-1626

May 4, 2001

Ms. Elizabeth Dickerson
LeBouef, Lamb, Greene & MacRae, L.L.P.
1875 Connecticut Avenue, N.W., Suite 1200
Washington, DC 20009-5729

Dear Ms. Dickerson:

This letter responds to the letters dated April 3, 2001 to Jennifer Spoehr, James Van Der Beek and Richard Flatt indicating VoiceStream's intent to convert its Special Access Circuits to combinations of Unbundled Network Elements (UNEs), and asking questions regarding the process to be used. You addressed one of these letters to Ameritech Corporation, and another to SBC Communications, Inc. At the outset we note that VoiceStream purchases no Special Access from Ameritech Corporation or SBC Communications Inc., but does purchase services from the SBC operating companies, including Ameritech Illinois, Southern New England Telephone (SNET) and Southwestern Bell Telephone Company. Thus, this letter will treat your inquiry as a letter directed to the operating companies.

Most of your questions are answered on the SBC web site for carriers with interconnection agreements, <https://clec.sbc.com>.¹ The process was also described in Accessible Letter Number CLECAM01-023 dated February 1, 2001, which is also available at <https://clec.sbc.com> or at <http://www.sbcprimeaccess.com>. While we do not necessarily agree with all of your characterization of the FCC's *Third Report and Order*, we have attempted to specifically address your questions as follows:

- *On a LATA-specific basis, are UNEs available to replace the Special Access facilities VoiceStream currently purchases from SBC?*

A precise response cannot be given from the information contained in your letter. To begin the process of conversion VoiceStream must supply a list of circuits to the SBC operating companies under the procedures listed on the web site. The operating company can then review the specific circuits designated by VoiceStream and determine whether the request complies with the requirements of the FCC's orders.

¹ From the home page, click on CLEC Handbook, Illinois, Go, Products & Services, UNE, UNE Forms & Exhibits, Special Access to UNE Forms, Reconfiguration Options. You may also go directly to https://clec.sbc.com/restr/clecbh/forms/ameritech/uneforms/special_access_forms.html.

- *What, if any, technical differences exist between UNEs and SBC's Special Access DS1s that VoiceStream purchases?*

Again, a precise response cannot be given from the information contained in your letter. While the circuit design may be the same in some instances, other differences exist depending on the type of circuit examined.

- *On a state-specific basis, please provide the price of these UNEs and their underlying components. Please consider this a request pursuant to 47 U.S.C. § 251(c)(3).*

For the Ameritech companies, please refer to the state tariffs, which can be found on <http://www.sbcprimeaccess.com> under the Resource Library. The tariffs are also listed in the CLEC Handbook on <https://clec.sbc.com> for each state. The tariffs are:

Illinois ICC 20, Part 19, Section 12
Michigan MPSC 20R, Part 19, Section 12
Wisconsin PSC of W20, Part 19, Section 12
Ohio Tariff Pending
Indiana Tariff Pending

For Southwestern Bell, CLECs are charged for services as negotiated through the contract process with designated account managers. Additional information is available at <https://clec.sbc.com> or from:

Technical Publication Information
530 McCullough Room 2-E-02
San Antonio, Texas 78259
210-886-1192

For SNET, please refer to the tariff:

Connecticut Access Service Tariff Section 18.2.5 for information related to the interoffice transport facilities (IOTF) and Section 2.11.

- *Please provide a sample comparison of UNE vs. Special Access pricing for identical 1.544 Mbps circuits.*

Special Access pricing will vary depending on the type of circuit and its jurisdiction. UNE rates may also vary, depending on location and negotiations. Thus, a sample comparison may not be informative. For example, a intrastate DS1 in Chicago from a Serving Wire Center to a SONET Ring Node ten miles away (carried 9 miles on a DS1 and one mile over a DS3) on the current Individual Case Basis (ICB) Agreement for VoiceStream is \$327/month (including the portion of the DS3 blended together) on a three-year term. Per the Ameritech FCC 2 interstate tariff, the one mile DS3 in zone 1 would be (\$466 for the DS3-DS1 mux + \$528 for 2 Channel Mileage Terminations + \$58.75 for Channel Mileage for 1 mile + \$1,200 for 1 Local Distribution Channel = \$2252.75)(for 28 DS1s this equates to 80.46 per DS1).

The interstate tariff rate for the 9-mile DS1 in zone 1 would be (\$103 for the SWC LDC+ \$132.40 for 2 Channel Mileage Terminations + \$125.44 for Channel Mileage for 9 miles + \$131 for 1 POP LDC = \$491.84). Thus, an interstate rate for the portion of the DS3 and the DS1 would be (\$80.46 + \$491.84 = \$572.30.) The UNE rate for the 1.544 MB circuit would be calculated either under the state tariff, or by accepting the terms of an existing Interconnection Agreement via Most Favored Nation (MFN) procedures, or by negotiating an amendment to the existing VoiceStream Interconnection Agreement which currently does not contain UNE rates.

- *How do the ordering processes for UNEs and Special Access facilities differ? How do ordering intervals differ?*

Account Management does not assist in the ordering of UNEs. UNEs are ordered through the Local Service Center instead of the Wireless Access Service Center. Questions related to provisioning and maintenance are also directed to different specialized groups depending on whether a UNE or Special Access is involved. The Local Service Request (LSR) form is used for UNEs instead of the Access Service Request (ASR) form used for Special Access. The due date for UNEs is negotiated with reference to standard intervals for Special Access (except for projects on which due dates are negotiated).

- *Are volume and term discounts available for UNEs?*

No volume or term agreements apply to UNE rates and charges.

- *What is the process for converting Special Access facilities to UNE pricing? How quickly can such a conversion occur?*

To summarize the process (the complete description is found on the web site as previously noted): VoiceStream provides the applicable Access Service Center (ASC) with a list of circuits that it wishes to convert, separated by SBC operating company, and specifies (self-certifies) for each circuit which of the FCC's criteria qualify that circuit for conversion. The SBC companies respond with a negotiated project due date and notify VoiceStream when to place their orders. VoiceStream places the orders.

- *What, if any, penalties exist for early termination of VoiceStream's Special Access facilities, when converting to UNEs? Would non-recurring charges apply?*

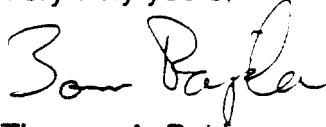
As applicable, termination liability will appear on the final invoice for Special Access circuits being reconfigured to UNEs. UNE loop and UNE transport recurring and non-recurring charges will apply as well as F.C.C. tariff Special Access Order Charges.

- *Please provide standard contract terms and conditions that would allow VoiceStream to include access to the UNEs necessary to replace Special Access arrangements under its existing interconnect agreements throughout the SBC region.*

The current procedures, terms and conditions may be found on the SBC web site <https://clec.sbc.com>.

I hope this responds fully to your inquiry. Please contact me if you have any other questions regarding the process. Details about particular circuits can be obtained through your clients' normal account team contacts.

Very truly yours,

A handwritten signature in black ink, appearing to read "Tom Pajda", written in a cursive style.

Thomas A. Pajda

cc. Susan Martin-McGrath, SBC Director
Jennifer Spoehr, Ameritech Account Manager
James Van Der Beek, SNET Account Manager
Richard Flatt, SW Bell Account Manager